

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-140
FM Table of Allotments,)	MM Docket No. 99-146✓
FM Broadcast Stations.)	RM-9490
(North Tunica and Friars Point, Mississippi,)	RM-9723
Kennett, Missouri, Munford, Tennessee, and)	RM-9724
Marianna, Arkansas))	RM-9725

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REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 10, 2000

Released: May 19, 2000

Before the Chief, Allocations Branch:

1. The Allocations Branch has before it the *Notice of Proposed Rule Making* in MM Docket No. 99-140 ("NPRM in MM Docket No. 99-140"),¹ issued at the request of Legend Broadcasting, Inc. ("Legend"), licensee of Station KTMO (FM), Kennett, Missouri, proposing the reallocation of Channel 255C from Kennett to Keiser, Arkansas, and the modification of the license for Station KTMO (FM) accordingly. It also has the *Notice of Proposed Rule Making* in MM Docket No. 99-146 ("NPRM in MM Docket No. 99-146"),² issued at the request of Fred Flinn, proposing the allotment of Channel 254A at North Tunica, Mississippi.

2. In MM Docket No. 99-140, Legend filed comments and a counterproposal proposing the reallocation of Channel 255C from Kennett, Missouri to Munford, Tennessee, the modification of Station KTMO(FM)'s license to reflect the change, as well as the allotment of Channel 254A to the community of Friars Point, Mississippi. Because this counterproposal is also mutually exclusive with the proposal for North Tunica, Mississippi in MM Docket 99-146, these dockets have been combined.

3. In MM Docket No. 99-146, Ken Reynolds d/b/a Bear Creek Radio ("BCR") filed a counterproposal requesting the allotment of Channel 254A at Marianna, Arkansas, Legend and Delta Radio, Inc. ("Delta"), filed counterproposals requesting the allotment of Channel 254A at Friars Point, Mississippi, and Olvie E. Sisk filed comments in support of the proposal at North Tunica.

4. On December 27, 1999, the petitioner in MM Docket 99-146, Fred Flinn, withdrew his interest in the allotment at North Tunica. On March 13, 2000, Legend filed two settlement agreements with the Commission. The first agreement, between Legend and Olvie Sisk, requests approval of Olvie Sisk's withdrawal in this proceeding. It states that Mr. Sisk has withdrawn his expression of interest in the

¹ See NPRM in MM Docket No. 99-140, 14 FCC Rcd 6949 (1999)

² See NPRM in MM Docket No. 99-146, 14 FCC Rcd 7184 (1999).

proposal for Channel 254A at North Tunica, and that Legend has agreed to pay Mr. Sisk his reasonable and prudent expenses relating to the preparation, filing and prosecution of those comments. The second settlement agreement requests approval of BCR's withdrawal in this proceeding. This request states that BCR has withdrawn its expression of interest in Channel 254A at Marianna, Arkansas, and that Legend has agreed to pay BCR its reasonable and prudent expenses relating to the preparation, filing and prosecution of its counterproposal. Pursuant to Section 1.420(j), of the rules, all parties to these agreements certify that each will not receive or pay any amount in excess of the reasonable and prudent expenses in this matter. We will grant these withdrawals as well as Fred Flinn's earlier withdrawal.

5. Accordingly we will consider the remaining matters before us, which are the proposal and counterproposal filed by Legend in MM Docket 99-140, and the proposals for Friars Point, Mississippi requested by both Legend and Delta.

6. As stated in the *NPRM* in MM Docket No. 99-140, Keiser, Arkansas, fulfills several indicia of a community for allotment purposes, having a Mayor, city council, elementary school and library as well as water and sanitation services. However, according to Legend, Munford, Tennessee, the community it proposes in its counterproposal, is a preferable community for allotment purposes, because, with a 1990 US Census population of 2,326, it has a larger population than Keiser, which has a 1990 Census population of 805 people. Munford also has indicia of a community which would establish it as a community for allotment purposes. It has a mayor/alderman form of government, the city provides water, sewer and natural gas service and has police and fire departments. The community also has an elementary, middle and high school, and has numerous businesses, churches and its own post office. Neither community has a local aural transmission service.

7. In MM Docket No. 99-146, both Legend and Delta state that Friars Point, Mississippi is a community for allotment purposes. Friars Point is an incorporated community and census designated place with a 1990 census population of approximately 1,300 persons. It has a mayor, five aldermen, a post office and zip code, as well as fire and police departments. It also has a school, churches and businesses. No party disputes its community status. An allotment at the community will provide it with its first local aural service.

8. We believe that the reallocation of Channel 255C from Kennett, Missouri to Munford, Tennessee and the allotment of Channel 254A at Friars Point, Mississippi, will serve the public interest. As stated above, both Munford and Friars Point are communities for allotment purposes. Each community will receive its first local aural service, and the community of Kennett will retain four local aural services. In addition, a Commission engineering analysis indicates that the reallocation from Kennett to Munford will result in a net gain of 195,650 persons served by Station KTMO(FM). Furthermore, Kennett will continue to receive local aural service from four other radio stations,³ and there are no underserved areas in the loss area. Finally, no urbanized areas are involved in either proposal.

9. Channel 255C can be allotted to Munford, Tennessee, consistent with the minimum distance separation requirements of Section 73.207(b) and the principal community coverage requirements of Section 73.315(a) of the Commission's Rules at petitioner's requested site 41.2 kilometers (25.6 miles) northeast of the community.⁴ Additionally, consistent with the minimum distance separation requirements of Section 73.207(b), Channel 254A can be allotted to Friars Point, Mississippi, at a site 4.2 kilometers

³ Stations KAUF(FM), KXOQ(FM), KOTC(AM), and KBOA(AM), are licensed to Kennett.

⁴ The coordinates for Channel 255C at Munford, Tennessee, are 35-46-53 and 89-36-46.

(2.6 miles) north of the community.⁵

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 3, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Munford, TN	255C
Friar's Point, MS	254A
Kennett, MO	282A

11. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Station KTMO (FM), IS MODIFIED to specify operation on Channel 255C at Munford, Tennessee, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Legend Broadcasting, Inc., licensee of Station KTMO, Channel 255C, Kennett, Missouri, is required to submit a rule making fee in addition to the fee required for the application to effectuate the change of community from Kennett, Missouri to Munford, Tennessee.

13. A filing window for Channel 254A at Friars Point, Mississippi, will not be opened at this time. Instead, the issue of opening a filing window for that channel will be addressed by the Commission in a subsequent *Order*.

14. IT IS FURTHER ORDERED That the petition for rule making filed by Fred Flinn requesting the allotment of Channel 254A at North Tunica, Mississippi, the counterproposal filed by Ken Reynolds d/b/a Bear Creek Radio, requesting the allotment of Channel 254A at Marianna, Arkansas, and the comments filed by Olvie Sisk in support of the allotment of Channel 254A at North Tunica, ARE DISMISSED at the parties' request.

⁵ The coordinates for Channel 254A at Friars Point, Mississippi, are 34-24-09 and 90-38-51.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning the above, contact Victoria McCauley, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**